



STATE BOARD OF EQUALIZATION

April 6, 1988

Dear

This is in response to your letter of February 8, 1988.

The petitions for redetermination of your clients, _____, _____ and _____, were scheduled for oral hearing before the State Board of Equalization in San Francisco on March 10, 1988. The hearing was postponed at our request, in order that we could have an opportunity to review the points raised by you in your letter of December 7, 1987, addressed to _____.

We believe we understand the position which you have taken. We understand that there was a sale in this state of bunker fuel to _____. The fuel was loaded aboard and consumed in the operation of the vessel _____. The vessel was under time charter by its owners to _____. We believe everyone is in agreement that the time charter constituted a contract of carriage, and not a lease of the vessel--as would occur if there were a bareboat charter. It has been our position in reviewing your petitions that the sale of fuel to _____ did not qualify for exemption under Revenue and Taxation Code Section 6385, because the fuel was not sold to a common carrier for carriage to a point outside this state.

At this juncture, we are in agreement with the analysis made by the hearing officer. It is true that _____ was required to furnish the fuel for use in operation of the vessel, but this does not mean that _____ purchased the fuel as agent for the owners of _____ or for resale to the owners of _____. The fuel can be characterized by "customer-furnished" fuel." There was no sale of the fuel to the carrier, notwithstanding the contractual relationship between _____ and the owners of the vessel. The owners of the vessel has no right to offload the fuel and dispose of it for their own account.

You also contend that the sale of the fuel to _____ qualifies as a sale in foreign commerce. This does not seem to us to be a case of the type considered by the court in Richfield Oil Corp. v. State Board of Equalization, 329 U.S. 69. There fuel was loaded into the hold of a ship by the seller thereof. The sale qualified as an export sale. Here the fuel is loaded as bunker fuel to be used in the voyage embarking from the California port. It is the fact that transactions of this type are taxable as sales and deliveries in this state which results in a need for the Section 6385 exemption if that portion of the fuel used beyond the first out-of-state destination is to escape California sales tax.

We have requested of our Petition Unit that this matter be scheduled for oral hearing in early June in Sacramento. The Board can best resolve this dispute with finality.

As you are aware, the other issue which have been identified as continuing questions under Section 6385--purchaser listed as seller on bill of lading, seller left blank on bill of lading, over and under offsets, country rather than port as destination, and Panama as destination--have either been resolved by the Board or heard by the Board. The Panama issue was heard in San Francisco in March and was taken under consideration. We believe it would be in the best interests of all parties if any residual questions can be put to rest as soon as possible.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel